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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/868,141	06/15/2001	Shuji Takana	1422-0480P	6016
2292 7590 01/23/2007 BIRCH STEWART KOLASCH & BIRCH PO BOX 747 FALLS CHURCH, VA 22040-0747			EXAMINER DOUYON, LORNA M	
			ART UNIT 1751	PAPER NUMBER

SHORTENED STATUTORY PERIOD OF RESPONSE	NOTIFICATION DATE	DELIVERY MODE
3 MONTHS	01/23/2007	ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

Notice of this Office communication was sent electronically on the above-indicated "Notification Date" and has a shortened statutory period for reply of 3 MONTHS from 01/23/2007.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

mailroom@bskb.com

Office Action Summary

Application No.

09/868,141

Applicant(s)

TAKANA ET AL.

Examiner

Lorna M. Douyon

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 02 November 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-6,8,16 and 18 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-6,8,16 and 18 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date 5/4/05.

- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____.

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1. This action is responsive to the amendment filed on November 02, 2006.
2. Claims 1-6, 8, 16 and 18 are pending.
3. Claims 1-6, 8, 16 and 18 stand rejected under 35 U.S.C. 103(a) as being unpatentable over Atkinson et al. (US Patent No. 4,900,466), hereinafter "Atkinson" for the reasons set forth in the previous office action.

Response to Applicants' Arguments

4. Applicants' arguments filed November 2, 2006 have been fully considered but they are not persuasive.

With respect to the rejection based upon Atkinson, Applicants argue that Atkinson discloses at column 22, lines 12-19 a detergent composition containing the adjunct of Example 30 and the base powder of Example 24 at a specific ratio, and the adjunct of Example 30 corresponds to the detergent additive particles (a) of the present invention, and contains liquid non-ionic surfactant in the amount of 23% by weight which falls outside of the range recited in applicants' claimed invention (less than 6% by weight), and for this reason, Atkinson fails to suggest the claimed invention.

The Examiner respectfully disagrees with the above argument because a reference is not limited to the working examples, see *In re Fracalossi*, 215 USPQ 569 (CCPA 1982). All disclosures of the prior art, including non-preferred embodiment, must be considered. See *In re Lamberti and Konort*, 192 USPQ 278 (CCPA 1967). Also, non-preferred embodiments can be indicative of obviousness, see *Merck & Co. v. Biocraft Laboratories Inc.* 10 USPQ 2d

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1843 (Fed. Cir. 1989); *In re Lumberti*, 192 USPQ 278 (CCPA 1976); *In re Kohler*, 177 USPQ 399. As stated in the previous office action, in col. 9, lines 51-62, Atkinson teaches that an adjunct will be prepared by spraying liquid or liquefied nonionic surfactant onto a spray-dried carrier material according to the invention, and the adjunct is then postdosed to a base powder containing anionic surfactant, possibly nonionic surfactant and builders prepared in a separate spray-drying operation and that the adjunct, may, for example, contain from 5 to 40% by weight of nonionic surfactant and from 60 to 95% by weight of crystal-growth-modified inorganic salts and that the adjunct may, for example, constitute from 5 to 20% by weight of the final powder. In addition, in col. 3, lines 1-23, the incorporation of one or more detergent components in liquid form (i.e. nonionic surfactant) into the spray dried powder (i.e. adjunct, which is equivalent to detergent particles (a)) is only optional". Hence, the minimum content of nonionic surfactant in the adjunct of Atkinson, which is equivalent to the "detergent additive particles (a)" of the present invention overlaps with "less than 6% by weight of a surfactant" required in the "detergent additive particles (a)" of the present invention . Hence, a *prima facie* case of obviousness exists because the claimed ranges "overlap or lie inside ranges disclosed by the prior art", see *In re Wertheim*, 541 F.2d 257, 191 USPQ 90 (CCPA 1976; *In re Woodruff*, 919 F.2d 1575, 16USPQ2d 1934 (Fed. Cir. 1990). See also MPEP 2131.03 and MPEP 2144.05I.

Applicants also argue that the superior effects of the present invention are amply demonstrated by applicants' Examples and Comparative Examples. Applicants argue that Comparative Particles 1 and 2 at Table 1 correspond to the adjunct of Atkinson

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which contains liquid non-ionic surfactant in the amount of 23% by weight which falls well outside the claimed range of less than 6% by weight. Comparative Particles 1 and 2 contain 15% by weight of LAS-Na which are also well outside of the claimed range.

Applicants then argue that the above-discussed comparative data is believed to overcome any *prima facie* case of obviousness believed presented by the Examiner, as applicants have clearly demonstrated that the presence of amounts of surfactant in the amount taught by the reference fails to enable the desired results to be achieved.

Applicants also argue that advantageous results to obtaining a low "Remaining Ratio" are achieved by use of 30/70 (which falls in the range of the claim, i.e. 15/85-40/60) detergent additive/detergent particles weight ratio, as opposed to the other exemplified weight ratios which fall outside of the scope of the claimed limitation.

The Examiner has carefully considered the showing on pages 43-65 of the present application, in particular, the Examples and Comparative Particles 1 and 2 at Table 1. The showing, however, is not commensurate in scope with the claims. The showing is only true for detergent additive particles (a) comprising at least the following ingredients: sodium carbonate, sodium sulfate, and sodium polyacrylate, and not the generic "inorganic water-soluble salt which may be an ammonium or amine salt, and not an alternative carbonate or sulfate group, rather a combination. In addition, the showing is not compared with the closest prior art, i.e. to Atkinson because in Atkinson, the surfactant used is a nonionic surfactant whereas in the comparative particles in Table 1 the surfactants used are anionic surfactants.

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5. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

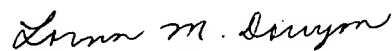
A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Lorna M. Douyon whose telephone number is 571-272-1313. The examiner can normally be reached on Mondays-Fridays 8:00AM-4:30PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Douglas McGinty can be reached on 571-272-1029. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Lorna M. Douyon
Primary Examiner
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